EXHIBIT E

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

TRAVELERS CASUALTY AND SURETY COMPANY as Administrator for RELIANCE INSURANCE COMPANY,

Civil Action No.: 04 Civ. 5101 (HB) **ECF CASE**

Plaintiff,

v.

THE DORMITORY AUTHORITY OF THE STATE OF NEW YORK, TDX CONSTRUCTION CORP. and KOHN, PEDERSON, FOX & ASSOCIATES, P.C.,

Defendants.

DORMITORY AUTHORITY OF THE STATE OF NEW YORK,

Third-Party Plaintiff,

٧.

TRATAROS CONSTRUCTION, INC. and TRAVELERS CASUALTY AND SURETY COMPANY,

Third-Party Defendants

TRATAROS CONSTRUCTION, INC. and TRAVELERS CASUALTY AND SURETY COMPANY,

Fourth-Party Plaintiffs,

G.M. CROCETTI, INC., CAROLINA CASUALTY INSURANCE COMPANY, BARTEC INDUSTRIES INC., DAYTON SUPERIOR SPECIALTY CHEMICAL CORP., SPECIALTY CONSTRUCTION BRANDS, INC. t/a TEC, KEMPER CASUALTY INSURANCE COMPANY d/b/a KEMPER INSURANCE COMPANY, GREAT AMERICAN INSURANCE COMPANY, NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., UNITED STATES FIRE INSURANCE COMPANY, ALLIED WORLD ASSURANCE COMPANY (U.S.) INC. f/k/a COMMERCIAL UNDERWRITERS INSURANCE COMPANY, ZURICH AMERICAN INSURANCE COMPANY d/b/a ZURICH INSURANCE COMPANY, OHIO CASUALTY INSURANCE COMPANY d/b/a OHIO CASUALTY GROUP, HARLEYSVILLE MUTUAL INSURANCE COMPANY (a/k/a HARLEYSVILLE INSURANCE COMPANY, an insurer for BARTEC INDUSTRIES INC.), JOHN DOES 1-20, and XYZ CORPS. 1-12,

Fourth-Party Defendants.

AFFIDAVIT OF JOHN SCARPELLINO, SR. IN SUPPORT OF TRATAROS CONSTRUCTION, INC.'S AND TRAVELERS CASUALTY AND SURETY COMPANY'S OPPOSITION TO THE CONSOLIDATED MOTION TO DISMISS

STATE OF CONNECTICUT)
) ss
COUNTY OF HARTFORD	<u> </u>

I, JOHN SCARPELLINO, SR., being duly sworn, depose and say:

- I am a Claims Manager for the Plaintiff/Third-Party Defendant/Fourth-Party 1. Plaintiff, Travelers Casualty and Surety Company (hereinafter "Travelers"). I make this Affidavit in support of Travelers' and Trataros' Opposition to the Consolidated Motion to Dismiss the Amended Fourth-Party Complaint brought by Fourth-Party Defendants, Zurich American Insurance Company d/b/a Zurich Insurance ("Zurich"), Kemper Casualty Insurance Company d/b/a Kemper Insurance Company ("Kemper"), Harleysville Mutual Insurance Company ("Harleysville"), United States Fire Insurance Company ("U.S. Fire"), Allied World Assurance Company (U.S.) Inc. f/k/a Commercial Underwriters Insurance Company ("AWAC"), and Ohio Casualty Insurance Company d/b/a Ohio Casualty Group ("Ohio"). The statements I make herein are based primarily upon my personal knowledge and a review of the files and records that Travelers has obtained from Trataros, along with any other information that Travelers gathered in its investigation of this matter to date.
- Travelers is in the business of writing a variety of surety bonds, including bonds 2. issued at the request of construction contractors required by law and/or by contract to supply them to project owners such as Defendant/Third-Party Plaintiff, The Dormitory Authority of the State of New York (hereinafter "DASNY").
- One such construction contractor, Trataros, obtained a set of performance and 3. payment bonds when it successfully bid a construction contract with DASNY known as "Baruch College—Site 'B' General Construction #2 Work, Contract No. 16, DA6500-1802-2178" dated August 27, 1998 (hereinafter "Contract 16") Contract 16 is one of two contracts awarded by

DASNY to Trataros that are at issue in the within litigation (see Affidavit of S. Dwight Stephens ["Stephens Aff."], Exhibit A thereto, ¶¶ 9-14).

- In connection with Contract 16, Reliance Insurance Company ("Reliance") issued the following surety bonds:
 - a. Performance Bond No. B28 80 353, naming Trataros as principal, and for the benefit of DASNY as obligee, in the penal sum amount of \$24,140,000.00 and dated August 27, 1998, a true copy of which is attached hereto as Exhibit 1; and
- b. Labor and Material Payment Bond B28 80 353, naming Trataros as principal, and for the benefit of DASNY as obligee, in the penal sum amount of \$24,140,000.00 and dated August 27, 1998, a true copy of which is attached hereto as Exhibit 2; (hereinafter collectively referred to as "the Bonds").
- Subsequently, Travelers entered into an agreement with Reliance, whereby 5. Reliance granted a power of attorney to Travelers to act as administrator for Reliance and as a reinsurer with respect to certain reinsured contracts and reinsured liabilities, including the contracts at issue in the within action. Travelers is the real party in interest here.
- After Travelers agreed to act as Reliance's administrator and reinsurer in 6. connection with, inter alia, the Bonds and Contract 16, Trataros entered into a General Agreement of Indemnification ("GAI") with Travelers. A true and correct copy of the GAI, dated November 20, 2001, is attached hereto as Exhibit 3.
- Under the terms of the GAI, Trataros appointed Travelers as its attorney-in-fact 7. for the purpose of, among other things, pursuing Trataros' rights in connection with the bonds issued and/or administered by Travelers on Trataros' behalf. See Exhibit 3, ¶ 11.
- Travelers was never notified of any default entered by DASNY against Trataros 8. during Trataros' prosecution of its work under Contracts 15 and 16.
- Further, DASNY never asserted a performance bond claim under the Bonds 9. during Trataros' prosecution of its work under Contracts 15 and 16.

- 10. In light of the facts that Trataros was not defaulted and no performance bond claim was received during Trataros' prosecution of work under Contracts 15 and 16, Travelers did not have occasion to interject itself into Trataros' day-to-day, on-site operations on the Baruch College project and/or into the prosecution of the work required under Contracts 15 and 16.
- 11. Travelers maintains its principal place of business at One Tower Square, 4PB, Hartford, Connecticut. The primary claims personnel handling the claims associated with the Bonds, including this affiant, work out of Travelers' Harford offices.
- Trataros' former principal place of business was located at 664 64th Street, 12. Brooklyn, New York 11220.
- In or about the Spring of 2003, Trataros ceased active business operations. Upon 13. information and belief, from at least this point in time, Trataros ceased to retain any employees.
- DASNY filed its Third-Party Complaint in the within action on or about August 14. 4, 2004. (See Stephens Aff., Exh. B thereto.) At this time, Trataros had not operated as an active business, nor maintained any employees, for nearly 14 months.

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AUG 25 2005 08:53 FR ST PAUL-TRAVELERS 860 277 1303 TO 919735145959 P.06

John Scarpellino, Sr.

Sworn to and subscribed before me this 25

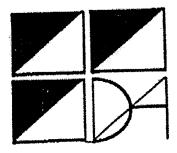
day of August 2005.

Notary Public

MY COMMISSION EXPIRES DECEMBER 31, 2007

EXHIBIT 1

PERFORMANCE BOND



DORMITORY AUTHORITY - STATE OF NEW YORK

Main Office 161 Delaware Avenue Delmar, New York 12054 (518) 475-3000 New York City Office One Penn Plaza, 52nd Floor New York, New York 10119-0098 (212) 273-5000

(03/92)

·...

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

Bond No. B28 80 353

TRATAROS CONSTRUCTION, INC. That

664 64th Street, Brooklyn, New York 11220

as Principal, hereinafter called CONTRACTOR, and

RELIANCE INSURANCE COMPANY

(Here insert the legal title of Surety)

6 Campus Drive, Parsippany, New Jersey 07054

(Address)

as Surety, hereinafter called Surety, are held and firmly bound unto the Dormitory Authority - State of New York, 515 Broadway, Albany, New York 12207, as Obligee, hereinafter called OWNER, in the amount of Twenty-four Million, One Hundred Forty Thousand and 00/100 Dollars (\$24.140.000.00) for the payment whereof CONTRACTOR and Surety bind themselves, their heirs, executors; administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, CONTRACTOR has by written agreement dated August 27, 1998 entered into a Contract with OWNER for the General Construction #2, - Contract #16, Brooklyn. New York 11220, DA # 6500 1802 2178, IDE# 61506 in accordance with the Contract Documents and any changes thereto, which are made a part hereof, and are hereinafter referred to as the Contract.

If the CONTRACTOR performs the Contract, the Surety and the CONTRACTOR shall have no obligation under this Bond, except to participate in conferences as 1. provided in Subparagraph 2.1.

2. If there is no OWNER default, the Surety's obligation under this Bond shall arise after:

...

- 2.1 The OWNER has notified the CONTRACTOR, the Surety at its address described in Paragraph 8, below that the OWNER is considering declaring a CONTRACTOR in default.
- 2.2 The OWNER has declared a CONTRACTOR in default and formally terminated the CONTRACTOR's right to complete the Contract.
- 2.3 The OWNER has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Contract or to a CONTRACTOR selected to perform the Contract in accordance with the terms of the Contract with the OWNER.
- 3. When the OWNER has satisfied the conditions of Paragraph 2., the Surety shall, at the OWNER's option, promptly and at the Surety's expense take on the following actions:
 - 3.1 Arrange for the CONTRACTOR, with consent of the OWNER, to perform and complete the Contract; or
 - 3.2 Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
 - Obtain bids or negotiated proposals from qualified contractors acceptable to the OWNER for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the OWNER and the CONTRACTOR selected with the OWNER's concurrence, to be secured with performance and payment bonds executed by a qualified Surety equivalent to the bonds issued on the Contract, and pay to the OWNER the amount of damages as described in Paragraph 5, in excess of the Balance of the Contract Price incurred by the OWNER resulting from the CONTRACTOR default.
- 4. If the Surety does not proceed with reasonable promptness, the Surety shall be deemed to be in default on this Bond, and the OWNER shall be entitled to enforce any remedy available to the OWNER.
- After the OWNER has terminated the CONTRACTOR's right to complete the Contract, and if the Surety elects to act under Subparagraph 3.1, 3.2, or 3.3 above, then the responsibilities of the Surety to the OWNER shall not be greater than those of the CONTRACTOR under the Contract, and the responsibilities of the OWNER to the Surety shall not be greater than those of the OWNER under the Contract. To the limit of the amount of this Bond, but subject to commitment by

the OWNER of the Balance of the Contract Price to mitigation of costs and damages on the Contract, the Strety is obligated without duplication for:

- 5.1 The responsibilities of the CONTRACTOR for correction of defective work and completion of the Contract;
- Additional legal, design, professional, and delay costs resulting from the CONTRACTOR's Default, and resulting from the actions or failure to act of the Surety under Paragraph 3.; and
 - 5.3 Liquidated Damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of the CONTRACTOR.
- 6. The Surety shall not be liable to the OWNER or others for obligations of the CONTRACTOR that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the OWNER or its heirs, executors, administrators or successors.
- The Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders, and other obligations.
- 8. Notice of the Surety and the CONTRACTOR shall be mailed or delivered to the address shown on the signature page. Notice to the OWNER shall be mailed or delivered to the address shown in the preamble.

9. Definitions:

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- 9.1 Balance of the Contract Price: The total amount payable by the OWNER to the CONTRACTOR under the Contract after all proper adjustments have been made, including allowance to the CONTRACTOR of any amounts received or to be received by the OWNER in settlement of insurance or other claims for damages to which the CONTRACTOR is entitled, reduced by all valid and proper payments made to or on behalf of the CONTRACTOR under the Contract.
- 9.2 Contract: The agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto.
- 9.3 CONTRACTOR Default: Failure of the CONTRACTOR, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.

(City, State, Zip)

OWNER Default: Failure of the OWNER, which has neither been 9.4 remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof. The penal sum of this Bond is in addition to any other Bond furnished by the CONTRACTOR and in no way shall be impaired or affected by any other Bond. Any suit under this Bond must be instituted before the expiration of two (2) years from the date on which Final Payment is made under this Contract. Signed as of this lst day of September IN THE PRESENCE OF: RELIANCE INSURANCE COMPANY TRATAROS CONSTRUCTION, INC. (Surety) (Contractor) (Signature) (Signature) ELEANOR DOUDERA, ATTORNEY-IN-FACT (Title) 6 Campus Drive 664 64th Street (Address) (Address) 07054 Parsippany, New Jersey Brooklyn, New York 11220

(City, State, Zip)

ACKNOWLEDGMENT OF CONTRACTOR, IF A CORPORATION

	/ - 1 1/
	STATE OF NEW YORK SS: COUNTY OF KINGS
	On the $\frac{4^{TH}}{6}$ day of $\frac{SEFT}{6}$ in the year 19 $\frac{98}{8}$, before me personally came to me known, who, being by me duly sworn, did depose and say that (s)he resides at $\frac{STATEN}{1}$ $\frac{TSLAND}{1}$ $\frac{NEW}{1}$ $\frac{YORK}{1}$
	of TRATAROS CONSTRUCTION, INC., the corporation described in and which executed the above instrument; and that (s)he signed her/his name thereto by order of the Board of
	Directors of said corporation.
NOTARY PUBL	TRA ANDREOU IC, STATE OF NEW YORK O1AN6803638 Notary Public
OUALIFIED	IN QUEENS COUNTY
COMMISSION B	XPIRES MARCH 9, 20 AC
	ACKNOWLEDGMENT OF CONTRACTOR, IF A PARTNERSHIP
	STATE OF) COUNTY OF)ss:.
	On the day of in the year 19, before me personally came to me known and known to me to be a member of the firm, described in and who executed the foregoing instrument, and (s)he duly acknowledged to me that (s)he executed the same for and in behalf of said firm for the uses and purpose mentioned therein.
	Notary Public
	110mj 2
	ACKNOWLEDGMENT OF CONTRACTOR, IF AN INDIVIDUAL
	STATE OF) COUNTY OF)ss:
	COD1411 01
	On theday of in the year 19, before me personally came to me known and known to me to be the person
	described in and who executed the foregoing instrument and (s)he duly acknowledged that (s)he executed the same.
	Notary Public

ACKNOWLEDGMENT OF SURETY

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STATE OF NEW YOUNTY OF NEW YOUNTY OF	(ORK) ASSAU)55:
On the lst day	of September in the year 1998, before me personally came DERA to me known, who, being by me duly sworn, did t (s)he resides at SUFFOLK COUNTY, NY, that (s)he is the Attorney-In-Fact
of which executed th	RELIANCE INSURANCE COMPANY, the corporation described in and e above instrument; and that (s)he signed her/his name thereto by order rectors of said corporation.

:5

THERESA J. FOLEY
Notary Public, State of New York
No. 01F05043971
Qualified in Queena County 1999
Commission Expires May 22,

RELIANCE INSURANCE COMPANY

PHILADELPHIA, PENNSYLVANIA

PRINCIPAL'S ACKNOWLEDGEMENT—IF INDIVIDUAL OR FIRM

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On this 1st ELEANOR DOUDERA to me known, who, being by me duly sworn, add depose and say: That he resides in that he is Attorney-in-Fact of the RELIANCE INSURANCE COMPANY, the corporation described in and which executed the foregoing instrument; that the is Attorney-in-Fact of the RELIANCE INSURANCE COMPANY, the corporation described in and which executed the foregoing instrument; that that he is Attorney-in-Fact of the RELIANCE INSURANCE COMPANY, the corporation described in and which executed the foregoing instrument; that that he is Attorney-in-Fact of the Sale of said company; that he said instrument is such corporate seal of said company; that he said said instrument is such corporate seal of said company; that the Sale of New York has pursuant to Chapter 82 of insurance of the State of New York known as the Insurance Law, issued to the RELIANCE INSURANCE COMPANY his certificate that said the Consolidated Laws of the State of New York known as the Insurance Law, issued to the RELIANCE INSURANCE COMPANY his certificate that said the Consolidated Laws of the State of New York known as the Insurance Law, issued to the RELIANCE INSURANCE COMPANY his certificate that said the Consolidated Laws of the State of New York known as the Insurance Law, issued to the RELIANCE INSURANCE COMPANY his certificate that said the Consolidate Laws of the Vork Laws of the York Mounty Purson. Financial Statement Dated December 31, 1997 ASSETS Cash and Short Term Investments		NASSAU	entember	, 1998	, before me personally came
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he knows the corporate seal or said company, it is the said comporation; that he signed his name thereto by like authority; that the Superintendent the authority granted to him in accordance with the by-laws of sold comporation; that he signed his name thereto by like authority; that the Superintendent the authority granted to him in accordance with the by-laws of sold comporation; that he signed his name thereto by like authority; that the Superintendent in accordance with the by-laws of sold comporation; that he signed his name thereto by like authority; that the Superintendent in accordance with the by-laws of sold comporation; that he signed his name thereto by like authority; that the Superintendent in accordance with the by-laws of sold comporation; that he signed his name thereto by like authority; that the Superintendent is accordance with the superintendent part of the Superintendent part o	what he is Attorney-in-Fact of the h	STOUTOS MADOLANIANS MANIELA	Mil file derberener, emmi	d (v and much execute	menur that it was so affixed by
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State of Washington County of King Total Liabilities, Capital and Surplus State of Washington State of Washington County of King Total Liabilities, Capital and Surplus State of Washington State of Washington County of King Total Liabilities, Capital and Surplus State of Washington Vice President State of Washington Vice President	Other Assets Assets	\$ 5,626,660	.424	0.4 W.TAL ALID C	11001116
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Janus J. Crassland Vice President Vice President	that the foregoing is a rull, true and	Consect Statement of the			
Janus J. Crassland Vice President Vice President	•				aurino.
Janus J. Crassland Vice President Vice President	Sworn to me this 20th day of Marc	h, 1998.	<u> </u>	A STATE OF THE STA	
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Aloteny Public State of Washington, #2/ untray 1/20	June 7.	S	CROS / Vice	President	
Janis J. Crossland, Notary Public, State of Transport	V A ALIANE MORE	State of Washington	A STATE OF THE STA		
	Janis J. Crossland, Notary Public. County of King. My Commission E	xpires February 5, 2000.	MUMIT 4)		

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

RELIANCE SURETY COMPANY UNITED PACIFIC INSURANCE COMPANY

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RELIANCE INSURÂNCE COMPANY

RELIANCE NATIONAL INDEMNITY COMPANY

ADMINISTRATIVE OFFICE PHICADELPHIA

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that RELIANCE SURETY COMPANY is a corporation duly organized under the laws of the State of Delaware, and that RELIANCE INSURANCE COMPANY and UNITED PACIFIC INSURANCE COMPANY, are corporation duly organized under the laws of the Commonwealth of Pennsylvania and that RELIANCE NATIONAL INDEMNITY COMPANY is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called "the Companies") and that the Companies by virtue of signature and select on the constitute and appoint Anthony J. Romano, Eleanor Douders, Thomas Bean, Fred Nicholson, Gerard S. Macnotz, Rice Segistation, of Unionfelded New York their true and lawful Attorney(s):in-Fact, to make, execute, seal and deliver for and on their behalf, and se their act and deed any and other writings of curetyship and to bind the Companies thereby as fully and to the same extent as if such bonds and undertakings and other writings obligatory in the nature thereof were signed by an Executive Officers of the Companies and sealed and attested by one other of such officers, and hereby ratifies and confirms all that their seid Attorney(s)-in-Fact may do in pursuance, hereof.

This Power of Attorney is granted under and by the suthonty of Article VII of the By-Lews of RELIANCE SURETY COMPANY RELIANCE INSURANCE COMPANY, and RELIANCE NATIONAL INDEMNITY COMPANY Which provisions are now in full force and affect, reading as follows:

ARTICLE VE - EXECUTION OF BONDS AND UNDERTAKINGS

1. The Board of Directors, the Freedoms, the Chairman of the River, any Sarker Vice Princetors shall have power and authority to led present Appropriate for and in authorize them to and enter vertifuge obligatory in the nature thready, and but to present any skips Atternay to repeat of 2. Atternay to her fact shall have power and authority, subject is the Sarres and Britistian and Lindontziatory, recognic ances, contracts of Andersaty and other vertifues assignment in the Antonia ial at the Committee

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RELIANCE SURETY COMPANY
RELIANCE INSURANCE COMPANY
UNITED PACIFIC INSURANCE COMPANY
RELIANCE NATIONAL INDEMNITY COMPANY

STATE OF Pennsylvenia COUNTY OF Philadelphia

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On this, August 24, 1998, before me, Velencis Wortham, personelly appeared David T. Akers, who acknowledged himself to be the Serior Vice President of the Reliance Surety Company, and the Vice President of Reliance Insurance Company, United Pacific Insurance Company, and Reliance National Indemnity Company and that as such, being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing the name of the corporation by himself as its duly authorized officer.

In witness whereof, I hereunto set my hand and official see:

in witness whereof, I hereunto set my hand and official seal

Notarial Seal Valencia Wonham, Notary Public Philadelphia, Philadelphia County My Commission Expires Nov. 18, 2000

Valencia viorinam, Noisry Public in and for the State of Pennsylv Philadelphia, Philadelphia County My Commission Expires Nov. 18, 2000

I. Anita Zipperi, Secretary of RELIANCE SURETY COMPANY, RELIANCE INSURANCE COMPANY, UNITED PACIFIC INSURANCE COMPANY UNITED PACIFIC INSURANCE COMPANY ACTIONAL INDEMNITY COMPANY de hereby certify that the above and foregoing is a true and correction of the Payer of executed by said Compenies, which is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seels of said Companies this 15t day of September.





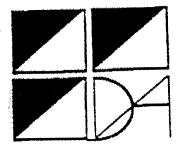




Case 1:07-cv-06915-DLC Document 138-10 Filed 03/11/2008 Page 17 of 29

EXHIBIT 2

LABOR AND MATERIAL PAYMENT BOND



DORMITORY AUTHORITY - STATE OF NEW YORK

Main Office 161 Delaware Avenue Deimar, New York 12054 (518) 475-3000 New York City Office One Penn Plaza, 52nd Floor New York, New York 10119-0098 (212) 273-5000

(03/92)

09/19/01, WED 08:03 PAX 51

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Q003

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS

That TRATAROS CONSTRUCTION, INC.

664 64th Street, Brooklyn, New York 11220

as Principal, hereinafter called CONTRACTOR, and

RELIANCE INSURANCE COMPANY

(Here insert the legal title of Surety)

6 Campus Drive, Parsippany, New Jersey 07054
(Address)

as Surety, hereinafter called Surety, are held and firmly bound unto the Dormitory Authority - State of New York, 515 Broadway, Albany, New York 12207, as Obligee, hereinafter called OWNER, in the amount of <u>Twenty-four Million</u>, <u>One Hundred Forty Thousand and 00/100 Dollars (524,140,000,00)</u>

WHEREAS, CONTRACTOR has by written agreement dated August 27, 1998 entered into a Contract with OWNER for the General Construction #2, - Contract #16. Brooklyn, New York 11230. DA # 6500 1802 2178. IDE# 61506 in accordance with the Contract Documents and any changes thereto, which are made a part hereof, and are hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the CONTRACTOR shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise such obligation shall remain in full force and effect, subject, however, to the following conditions:

- 1. A claimant is defined as one having a direct Contract with the CONTRACTOR or with a Subcontractor of the CONTRACTOR for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
- 2. The above named CONTRACTOR and Surety hereby jointly and severally agree with the OWNER that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were

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furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The OWNER shall not be liable for the payment of any costs or expenses of any such suit.

- No suit or action shall be commenced hereunder by any claimant:
 - Unless claimant, other than one having a direct contract with the CONTRACTOR, shall have given written notice to any two (2) of the following: 1) the CONTRACTOR, 2) the OWNER, or 3) the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the CONTRACTOR, OWNER, or Surety, at any place where an office is regularly maintained by said CONTRACTOR, OWNER, or Surety for the transaction of business, or served in any manner in which legal process may be served in the State in which the aforesaid project is located, save that such service need not be made by a public officer.
 - b. After the expiration of one (1) year following the date on which CONTRACTOR ceased work of said Contract, however, if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
 - Other than in a State court of competent jurisdiction in and for the county or other political subdivision of the State in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.
- 4. The penal sum of this Bond is in addition to any other Bond furnished by the CONTRACTOR and in no way shall be impaired or affected by any other Bond.

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5. The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good falth hereunder, inclusive of the payment by Surery of Mechanics Liens which may be filed of record against said improvement, whether or not claim for the amount of such fien be presented under and against this Bond.

Signed this <u>lat</u> day of <u>Set</u>	otember	_ 1998.				• • •
IN THE PRESENCE OF:						
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(Signature)		pature)	******			
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(Title)	(Th	lc)				•
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(Address)	(Ad	dress)		·	· ·	······································
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ACKNOWLEDGMENT OF SURETY

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the Attorney-In-Page	of <u>RELIANCE</u> . <u>INSURANCE COMPANY</u> , the corporation med the above instrument; and that (5)he signed her/his pame
thereto by order of the Board	of Directors of said corporation.

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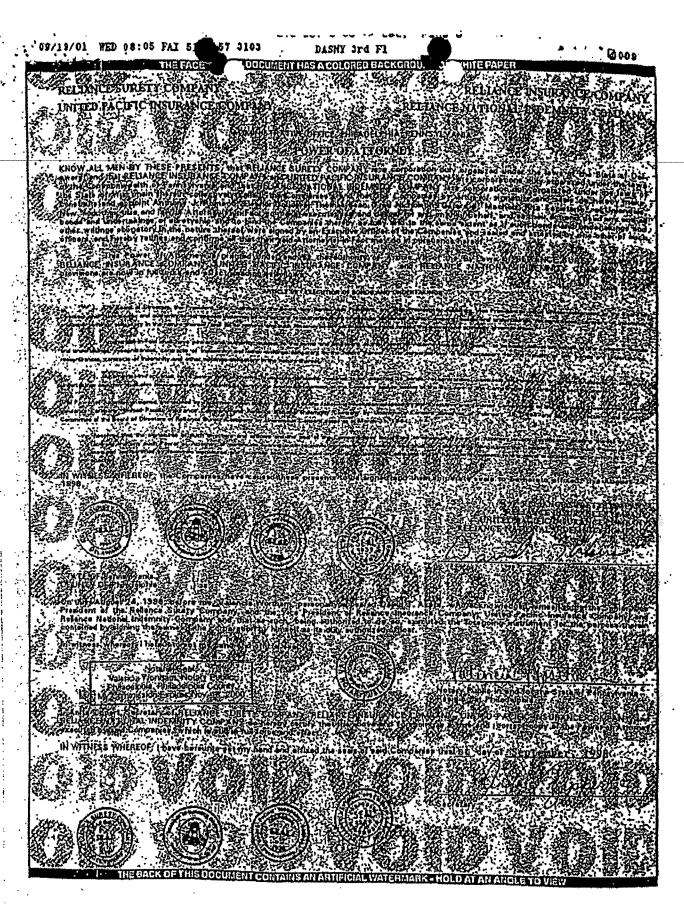


EXHIBIT 3

005 13:57 FR TRAVELERS BOND CLAIMS0 277 5722 TO 919735145959

TRAVELERS - Fax:173249/118

Jan 18 2002 15:10 P.02

NO. 0992

RAVELERS CASUALTY AND SURETY COMPANY OF AMERICA
HARTFORD CONNECTICUT

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P. 7/15

P.02/05

GENERAL AGREEMENT OF INDEMNITY

This General Agreement of Indemnity ("Agreement") is entered into by the undersigned ("Indemnitor") and Travelers Casualty And Surety Company of America ("Company"), witnesseth:

WHBREAS, in the transaction of business, certain Bonds have heretofore been and may hereafter be required by, for, or on bohalf of the Indemnitor or any one or more of the parties included in the designation Indemnitor. Application has been made and will hereafter be made to the Company to execute such Bonds. As a prerequisite to the execution of such Bonds, the Company requires complete indemnification.

NOW, THEREFORE, as an inducement to the Company and in consideration of the execution and delivery by the Company of one or more Bonds, and for other good and valuable consideration, the Indemnitors do, for themselves, their helps, executors, administrators and assigns, jointly and severally agree with the Company as follows:

1. Definitions: Bond Any and all contractual obligations which have been or will be undertaken by the Company on behalf of or set the request of Indomnitor, including renewals and extensions.

Company Travelers Casualty And Surety Company of America, its affiliated companies, successors, assigns, parents and subsidiaries whether now existing or formed hereafter.

Indemnitor Any one, or combination of any or all of the entities or individuals set forth below. Corporation Indemnitors are defined as the entity named below and their successors, assigns, subsidiaries, parents, affiliates, parentships, joint ventures, or as co-venturer with others, whether now existing or formed hereafter.

Contract An agreement of the Indemnitor for which the Company executes a Bond, procures a Bond, or has guaranteed performance, Default Any of the following shall constitute a Default: A declaration of Contract default by the obligee or entity for whom a Contract is performed; actual breach or abandonment of any Contract; a breach of any provision of this Agreement; failure to make payment of a properly due and owing bill in connection with any Contract; the establishment by the Company in good fatth of a reserve; improper diversion of Contract funds or indemnitor assets to the detriment of Contract obligations; Any indemnitor becomes the subject of any proceeding or agreement of bankruptsy, receivership, insolvency, creditor assignment or actually becomes insolvent; Indemnitor dies, becomes legally incompetent, is imprisoned, is convicted of a felony, or disappears and cannot be located; any representation furnished to the Company by or on behalf of the Indomnitor proves to have been materially faise or misleading when made

- 3. Payment of Premium The Indomnitor shall pay to the Company all premiums for every Bond executed and all renewals and extensions thereof, until the Company is discharged and fully released in writing from each such Bond.
- 3. Indemnification and Hold Harmless The Indemnitor shall excaerate, indemnity and save the Company harmless from and against every claim, loss, damage, demand, liability, cost, charge, suit, judgment, attorney's fee, and expense which the Company incurs in consequence of having executed, or procured the execution of such Bonds. Expense includes the cost of procuring or attempting to procure release from Lability, or in bringing suit to enforce this Agreement against any Indemnitor.
- 4. Claim Scalement The Company shall have the right, in its sole discretion, to determine for itself and the Indemnitor whether any claim or suit brought against the Company or the Indemnitor upon any such Bond shall be paid, compromised, settled, defended or appealed, and its decision shall be binding and conclusive upon the Indemnitor. An itemized statement thereof sworn to by an employee of the Company or a copy of the voucher of payment shall be prima facile evidence of the propriety and existence of Indemnitor's indicated to reimbursement for any and all payments made by it under the belief it was necessary or expedient to make such payments.
- 5. Collateral Security Indemnitor agrees to pay the Company, upon demand, an amount sufficient to discharge any claim or demand made against the Company on any Bond. Indemnitor further agrees to pay the Company, upon demand, an amount equal to the value of improperly diverted indemnitor assets or Contract Funds. These sums may be used by the Company to pay such claim or be held by the Company as collateral security against any loss, claim, liability or unpaid premium on any Bond. The Company shall have no duty
- 6. Remodies In the event of a Default, Indemnisor assigns, conveys, and transfers to the Company all of the rights and interest growing in any manner out of the Contracts and assigns all right, title, and interest of all of Indemnitor's plant, tools, vehicles, machinery, right at its sole discretion to:
- (A) Take possession of the work under any Contract and to complete said Contract, or cause, or consent, to the completion
- (B) Take possession of the Indomnitor's equipment, tools, machinery, vehicles, materials, office equipment, books, records, documents, and supplies at the site of the work or elsewhere and utilize them for the completion of the work under the Contracts without payment for such use:

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- (D) Execute in the name of the Indomnitor any instruments deemed necessary or desirable by the Company to: (a)provide the Company with title to assets, (b)take immediate possession of Contract funds whether earned or uncarned, (c)collect such sums as may be due Indomnitor and to endorse in the name of the Indomnitor, and (d)collect on any negotiable instruments:
- (B) Take possession of the Indemnitor's rights, title and interest in and to all Contracts, subcontracts let and insurance policies in connection therewith;
- (F) Be subrogated to all the rights, remedies, properties, funds, securities and receivables of the Indemnitor on said Contract or any other contract of Indemnitor and have the right to offset lesses on any Contract or Bond against proceeds, funds, or property due from another contract or Bond.
- 7. Joint and Several Liability The obligations of each Indemnitor hereunder are joint and several. The Company is authorized to settle with any one or more of the Indemnitors individually, and without reference to the others, and such settlement shall not bar or prejudice actions against or affect the liability of the others.
- 8. Decline Execution The Company has the right to refuse to provide any Bond, including final Bonds where the Company provided a bid bond, without incurring any liability whatsoever to Indomnitor.
- 9. Trust Fund All payments due, received for or on account of any Contract shall be held in trust as trust funds by Indemnitor for the benefit and payment of all obligations for which the Company as beneficiary may be liable under any Bond issued by the Company. Company may open a trust account or accounts with a bank for the deposit of the trust funds. Upon demand, Indemnitor shall deposit therein all trust funds received. Withdrawals from such trust accounts shall require the express consent of the Company.
- 10. Books. Records and Credit Indemnitor shall furnish, and the Company shall have the right to free access at reasonable times to all the books, records, documents, and accounts of indemnitor for the purpose of examining and copying them. Indemnitor expressly authorizes Company access to its credit records for underwriting purposes as well as, upon the establishment of a reserve, debt collection
- 1). Attorney in Fact Indomnitor constitutes, appoints and designates the Company as their attorney in fact with the right, but not the obligation, to exercise all rights of the Indomnitor assigned or granted to the Company and to execute and deliver any other assignments or documents due necessary by the Company to exercise its rights under this Agreement in the name of the Indomnitor.
- 12. Security Interest As security, the Indemnitor hereby grants to Company a security interest in all of its equipment, machinery, vehicles, tools, and material, as well as sums due or to become due in connection with any contract. This Agreement shall constitute a Security Agreement and a Financing Statement for the benefit of the Company in accordance with the Uniform Commercial Code and all similar statutes and may be filed by the Company without actics to perfect the security interest granted herein. The Company may add schedules or other documents to this Agreement as necessary. The security interests are affective as of the date of each Contract for that Contract.
- 13. Termination This is a continuing Agreement which remains in full force and effect until terminated. The sole method available to an Indomnitor to terminate its participation in this Agreement is by giving written notice to the Company of the Indomnitor's intent to terminate. The "Termination Date" shall be 30 days after the Company receives such notice. The obligation and liability of the particular Indomnitor giving such notice shall be limited to Bonds furnished before the Termination Date.
- 14. Other Sureties If the Company procures the execution of Bonds by other sureties, executes Bonds with cosureties or obtains reinsurance, the provisions of this Agreement inure to the benefit of such other surety, contrary or reinsurer.
- 15. Nature of Right: If any provision or portion of this Agreement shall be unenforceable, this Agreement shall not be void, but shall be construed and enforced with the same effect as though such provision or portion were omitted. Assent or refusal to assent to changes in any Contract or Bond by the Company shall not affect the obligations of the Indemnitor to the Company. The Company's rights under this Agreement are in addition to all other rights of the Company however derived. The rights and remedies afforded to the Company by the terms of this Agreement can only be modified by a rider in writing to this Agreement signed by an authorized representative of the Company. If any indemnitor fails to execute or improperly executes this Agreement, such failure shall not affect the obligations of any indemnitor. The failure to sign or the improper execution of a Band shall not affect the Company's rights under this
- 16. Personal Guarantee It is hereby agreed and understood that the personal guarantees of Costas and Joanne Trateros are for all past and future bonds written by either Retiance Insurance Company or Travelers Casualty and Surety Company of America or any and all of their respective affiliates.

WE HAVE READ THIS INDEMNITY AGREEMENT CAREFULLY. THERE ARE NO SEPARATE AGREEMENTS OR UNDERSTANDINGS WHICH IN ANY WAY LESSEN OUR OBLIGATIONS AS ABOVE SET FORTH.

IN TESTIMONY HEREOF, the Indemnitors have hereunto set their hands and fixed their scale this, in the year, 2001.	200	day of
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Page 2 of 4

Case 1:07-cv-069	15-DLC Doc	cument 138-10	Filed 03/11	/2008 Pa	ge 28 of 29
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